

UNLERO CONTACTED ELECTION PAGE

THE DECISION AGAINST

Judge Malt, of the circuit court, yesterday read his decision in the cause relating to the jailer's contested election, of *Thomas Batman vs. W. M. Thomas*, the present incumbent. The decision was looked to with interest, and will command the attention of the public. It is the decision:

THOMAS BATMAN vs. E. GARLAND, etc., and THE SAME vs. MONROE, etc.—These causes were, by consent of parties, heard together. The facts were agreed, and are as substantially as follows, to-wit:

On the 2d of August, 1858, an election was held for the office of sheriff, coroner, and jailer, of Jefferson county. The former incumbents had all candidates for election, and the sheriff, county court clerk, and coroner, were re-elected. The jailer, Judge Malt, was defeated, and the defendant, *Batman*, elected in his stead. The petitioner, *Thomas Batman*, claims that he was entitled to the office, and that the defendant, *Thomas Batman*, was not a legal candidate for the office of jailer. The poll books show that *Batman* received 5,844 votes, that *Thomas* received 3,503 votes, and that *Batman* received 55 votes. These numbers include the votes cast under several pages of the poll books, which were, it was alleged, designed by the clerk at the foot of the page, as directed by the judges. These pages are excluded from the count, then *Batman* received 3,214 votes, and *Thomas* received 3,216 votes. The court, however, held that *Thomas Batman* received a majority of sixty-three votes; by the second mode of computation *Batman* received a majority of 55 votes.

A certificate of election was given to *Thomas*, but *Batman* insists that he received a majority of

duly elected, and is entitled to the office of jailer of Jefferson county. He insists 1st, That the certificate given to Thomas is void, because it was not given by the proper officers. 2d, That it was, and still is, the duty of the county judge, sheriff, and county clerk, to compare the polls and return to him the certificate of his decision. And they having failed to act in the premises, he has moved for the writ of mandamus to compel them to discharge that duty.

He also gave notice to Thomas that he would contest the election, and a contesting board was organized, as provided by law, composed of A.

Court Clerk, and W. Lynn, a Justice of the Peace. That board decided that he had not given his notice in the time required by the statute, and, therefore, quashed his motion. He insists that his notice was given in due time, and it was, therefore, the duty of said board, and is still their duty, to hear his motion and determine upon the facts, the rights of the parties. He has, therefore, moved for the writ of mandamus against

them also, to compel them to hear his motion, and determine who is entitled to the office of jailer.

To the first petition the defendants, Thruston, county court clerk, and Megowan, sheriff, have responded that they were candidates, and were voted for at that election, and thus interested in the fact or issue to be found or determined, and could not, therefore, lawfully act in comparing

The fact is conceded that at the time when the law required that the polls should be compared, he was confined to his bed by sickness, and was, therefore, unable to act. The late county judge responds that he was willing to act, and did act with the two justices, Clemeut and Matlack, until they resolved to exclude from the computation of votes such pages of the poll books as had not been signed "at the foot thereof" by

the clerks. Differing from them on this proposition he retired from the board and declined further to act. This he did with apparent, and it may be added, with pardonable disgust.

To the second petition the defendants, Monroe, county judge, Thurston, county clerk, and Lynn, justice, have responded that the notice to contest the election was not given within ten days after the final action of the board of examiners, as re-

Such are the leading facts, and such the objects of these proceedings. It is obvious that the questions arising upon these facts are of the highest interest to the parties and to the public. These questions have been urged by the learned counsel on either side with great earnestness and signal ability. For this and other sufficient causes

Upon the first petition, three questions are presented: 1st. Has the plaintiff adopted his true and appropriate remedy? 2d. Had he, when he filed his petition, a clear legal right to the office into which he desires to be inducted?— And 3d. Was it the legal duty of the defend-

1st. Has the plaintiff adopted his true and appropriate remedy? This depends on the facts, and

nature, very unusual. The writ of mandamus is not a writ of right. It may be granted only in extraordinary cases, and, as a general rule, will never be granted to a party who has otherwise an adequate legal remedy. It is, in the language of Lord Mansfield, "a very beneficial writ, and the best method of preserving it, is to be sparing in the use of it." In England, the power to grant it belonged exclusively to the Court of King's

bench, and hence it was there beautifully styled one of the "*flowers of that court*." This may account for the unusual interest of Lord Mansfield in this writ, and explain the caution with which he is said to have dispensed it. He took especial pains, upon all proper occasions, to state the true grounds upon which it should be granted or refused; and for this reason his opinions upon this subject have been followed wherever the writ

to find a case, since he left the King's Bench, that was not based upon rules laid down by him. One of those rules, and one which has been adopted by our own appellate court, and by courts almost universally, is that the writ should never be granted except in the absence of other adequate legal remedies. It should be preserved and used as the suppletory means of substantial justice.—The Court of King's Bench used it only as a

But this rule is often misunderstood. When it is said that there must be an absence of other legal remedies, courts must be understood to mean remedies against the *defendant*. That the prosecutor may have other remedies against other parties, connected directly or remotely with the subject of the controversy, is no reason for withholding the writ. He must have some other adequate

therefore, as contended by defendant's counsel, a sufficient reason for refusing the writ in this case, that the plaintiffs might have contested the election with Mr. Thomas. The real question is, has he any other adequate legal remedy against these defendants. If it was their duty to convene as a board, compare the polls and give certificates of election, and they have, without good cause, failed to discharge that duty, what remedy has the main-

diff against them, except that which he has adopted. No one has been suggested, and in the opinion of the court, none can be suggested. It follows, therefore, that he has adopted his only, and therefore his true and appropriate remedy, if he has such a right, as can now be enforced. And this brings us to the second question:

2. Had the plaintiff, when he filed his petition, a clear legal right to the

If he was voted for by a majority of the qualified voters of the county, at a regular election, held according to law, then, under the constitution of the State, he was duly elected, and by virtue of that election was entitled to the office, and, therefore, to a certificate of election as the evidence of this right. If he did not receive such a majority, as a matter of course, he had no such right. Now according to the proved facts and indeed

according to the response of Mezgowan and Thurston, the poll books, as returned to the clerk's office, show that Batman received sixty-three votes more than his competitor, Thomas. But a portion of the poll books was excluded by justices Clement and Matlack, whereby a different result was produced. This was done upon the following provision of the statute upon elections: "Each clerk, in the presence of the judges, shall sign his name

at the foot of every page of the "poor book," as the election progresses, so that the same may be thereby identified."

It can scarcely be necessary to say that this provision of the statute is merely directory. It ought, as an act of duty, to have been followed, but it would be almost absurd to conclude that a candidate should be deprived of his votes, and of the office to which he might be chosen, simply because the clerk has failed to discharge this

But it is said that at some of the voting precincts the place of voting was changed on the day of election; that some one of the judges was not sworn, and that all the votes taken at such places.

und by such judges, should be excluded; and that by the exclusion of these votes the result will be so changed as to give Thomas a majority. The statute provides that for good cause the place of voting may be changed, on the morning of the election, to the "most convenient place," which can be found by the judges, public proclamation of such change being first made. Whether, in this case, the adjournment was to the most convenient place, as it has been held to be in other cases,

for it, I will not stop to inquire. It is sufficient that in all such cases the election was held at convenient public localities, and it does not appear, that by reason of the change, any citizen was deprived of his vote. Besides, it is to be presumed that the officers discharged their duty, and therefore, that in *their* judgment there existed sufficient cause for the adjournment, and that the place selected was the one deemed most con-

venient by them. And the fact that discon-
venience has resulted to the public, and that no
man has been deprived of his vote by the change
proves that they did not materially err in their
conclusions. It would not, therefore, be proper

her with or without counsel. It was manifestly intended that these boards should have exclusive jurisdiction of such matters, and that their action should be final. The constitution of the supreme court of North Carolina upon this subject stands as ours. (Crier vs. Shackelford, 28 S. C. 415.) The constitution of the construction of statutes, by our own appellate court, in the case of *Neumeum vs. Kirtley*, (13th Ben. Monroe) that court used the following language: "We are satisfied that the very purpose of providing these boards was to prevent the ordinary tribunals from being harassed, and indeed, overwhelmed by the investigations and involved the excitement to give rise, and that their decisions, so at least as regards the questions of fact touching the number and legality of the voters, as given for the respective candidates, was intended to be final." In that case the court said: "The board of election of the board, considering that as conclusive between the contestants, gave judgment upon the facts therein."

This case the certificate of the two justices in the language of the act, and in fact, is a transcript from the form presented by the clerk. If it is not a transcript, it is a forgery, and *at North the facts*, then, as a matter of fact, could have been a certificate of Bateman's election, even though it had read otherwise. But, such unfortunately, being the case, the certificate of Thomas "was duly elected jailer." There being, therefore, in the certificate upon which the removal of the clerk was based, a manifest and notorious denial, and petitions dismissed with costs.

(Reported Expressly for the Louisville Courier.)

POLICE COURT.

GEORGE W. JOHNSON, JUDGE.

MONDAY, NOV. 15.

to be assaulted against Mr. Branham, one of whom were keepers, but failing to prosecute, they were ordered to leave the country, returning a Horse.—A couple of fast young men, the "three fast fellows," were presented for a reward of \$1000, for having been caught in a trap cage of stoning, but as said Indian failed to appear, it was supposed to be a mistake, and they were released. A young man, named "Kreaser or Penox"—A young man, supposed to be a printer, got tight on stark-mad whisky, and, in a fit of insanity, was presented for trying to make a model artist out of himself. He was fined \$20.

From the Frontiers.

Warsaw, Nov. 7, 1862.

The Santa Fe Mail has just been brought to the 15th October. The news is not very important. The most exciting intelligence is contained in the letter from the "Frontiers," which is west of the San Francisco mountains. The grant company, by the principal persons of whom it is composed, has been ordered to stop at crossing of the Rio Colorado near the Mohave gorges. Shortly afterwards they were attacked by a band of Indians, who, after a desperate fight, were engaged in constructing fires to cross and burning their stock, with a bloody fight ensued. The Indians killed 10 men, 10 horses, 10 women and four children killed, with sixteen horses. The Indians took all the stock, except the horses, and then retreated. The company then retreated on the return route. The migrants, taking with them but two wagons, and a few men, were obliged to leave the horses and the women and children—the men left party at the date of the letter consisted of 100 men, 100 horses, 100 women and children from the two week haps up.—"After the retreat, starvation already

for assault against Mr. Branham, one of wharf tavern keepers, but failing to prosecute, he was released. He was seen returning a Horse.—A couple of fast young men, the "three fast ones" were presented for finding Mrs. Hunder's house. This was a supposition of some of the storekeepers. It did not appear, it was supposed to be a mistake, and party was discharged.

Nov. 10.—A young man, supposed a printer, got tight on stark-mad whisky, and a bottle brandy, which tore him so awfully that he had to be taken to a model artist himself. He was fined \$20.

From the Frontiers.

WESTPORT, Nov. 7, 1862

BE SURE, Be mail arrived yesterday, bringing the latest intelligence. It is not very important. The most exciting intelligence, however, is in a letter dated the 2nd September, eighty one, from the San Francisco mountains. The grant company, which was the first of its kind in the letter is signed, had arrived in safety at crossing of the Rio Colorado near the Mohave Indians, while most of the white men engaged in constructing rails to cross and in the state of their affairs. The company, in its engagement the emigrant lost three men, women and four children killed, with sixteen horses, and a great many sheep. The company then had of cattle and eleven horses. The grantees then retreated on the return route to the mouth of the Colorado, where they had to buy a small supply of provisions and drugs for the women and children—the party of 125 men, 25 women, and 100 children and children from the two week have camp.

After the retreat, starvation already set in, and the party was reduced to 100 men, and 15 children, but they were able to get on. They met another emigrant party, who generally shared with them their provisions and food. This party consisted of 100 men, but 15 left, and these were in a most miserable condition.

The frontier is still "high" along the borders, numbers will leave homes and business in the west to go in search of the glittering metal. The Indians are still in the mountains, and occasionally show a letter as the following was a white blanket on the fevered patients.—A letter was received last night by Bernard & from the mouth of the Colorado.

Nov. 11.—The steamer "Felix" arrived here twenty days from Westport. Found all well.—Indians are all peaceful. The gold fever is so high here as in Westport. The 10 or 1500 men are here, and the gold is so rich that the white men have left—some for Santa Fe, some for State, and some for Arkansas—starving and without money. The gold was found by any one was seven dollars.

Nov. 12.—The accounts of the same date, are of a different kind, and gentlemen are coming in and are protected by the country's intelligence to stay again. I shall give you all the prevailing news, whether favorable or unfavorable. The date of the letter was Nov. 10, 1862.

Nov. 13.—The members of the committee appointed by the Louisville Photographers to publish the bands in the Courier & Enquirer, have not brought against them on the part of the Louisville Photographers, but have been successful in their mission. This is as it should be, as we said. Union controlled as it is in Louisville, worse than in any other place. The members of the committee, as we have already understood, been man-

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applied in the Louisville Journal office, I have persisted in publishing the Courier and the Journal together, and, as a result, they are, in accordance with the terms of the constitution, no more liable to be published as rats than the committee themselves. I have also published the *Higher School* more than any other office in Louisville, yet, from the fact that the Union could not hally over W. N. P. and the *Journal* was not published on Sunday work, some four years since, they still persist in publishing their "rat" circulars, to the injury of their fellow craftsmen of the ink and rule."—*Oscar W. Hancock*.

NOVEL SENT BY A PICKET STAFF.—*The Day Journal*, of yesterday, says:

There is a singular suit on the docket in the court of common pleas in this county, the like of which is not to be found in the Columbia Gazette, and the absurdity of which is without parallel. It will be remembered that Jerry Nace, a resident of this city, was arrested for peeping into and robbing the house of John Estabrook, one of our most respectable citizens. He was arrested by the Columbia Guard, and brought suit against Mr. Estabrook for wicked malicious prosecution and imprisonment. Jerry Nace is his own lawyer, and his petition, on the 11th of October, 1868, is a rich specimen of the untutored in the ordinary branches, if in legal lore.

All Sorts of Paragraphs.

That's to make a tall man short is to him to lend you a hundred dollars.

Whether it's growing poorer and poorer by day; now it's growing poorer and puggier by night.

[illegible]

of live births, there were 657,633, and the number of deaths 590,507. The number of marriages was 10,000, and the number of divorces 1,000, and \$21,912 fine. The number of children in a nest of widlacs was 42,651, or 6½ per cent. of the whole. The greatest proportion of births in the quarter between April and July.

There was a great snake hunt in Foster, E. a few days since. As a Mr. Urown was walking across his field, he discovered a black snake, and told him to believe that it was a rattlesnake. In company with two others, he dug over a small nest of earth, and took out twenty-three snakes of various sizes, and killed them with a few feet of wire.

THE CITY OF JESUO, THE CAPITAL OF JAPAN, is a city of Jeddó is said to be without exception the largest city in the world. It contains 1,900,000 inhabitants, and is the largest number of 100,000 of people. Some of the streets are 1,000 feet in length, which is equal to 28 English rods.

DEATH FROM A CURSED SNAKE.—A little daughter of a Mr. West, a resident near Cooperace, while eating a melons yesterday, was bitten by a very small snake. The doctor was sent for, but before he reached the house the child was dead. She was about eight years of age. The mother said she could not tell where the little ones were from anything of that kind to eat.—*Eastern Star*.
